

**REPORT - PLANNING COMMISSION MEETING
November 6, 2003**

Project Name and Number: Double Wood Golf Course (PLN 2004-00036)

Applicant: Double Wood Golf Course, LLC

Proposal: To consider the Community Development Director's report on the annual review of the Development Agreement

Recommended Action: Find the applicant in compliance with the Development Agreement

Location: Generally located between the terminus of Green Valley Road and Rancho Higuera Road, east of I- 680 in the Warm Springs Planning Area

Assessor Parcel Number(s): 519-1725-6-001, 519-1718-005, 519-1726-001, 519-1726-057, 519-1726-087

Area: Approximately 400 acres

Owner: Double Wood Golf Course, LLC

Agent of Applicant: James Tong, Double Wood Golf Course, LLC

Consultant(s): Paul Kozachenko, Attorney

Environmental Review: In April 1991, the City Council certified the original EIR-90-31 as complete in conjunction with approval of the Avalon development Planned District P-90-9. EIR-90-31A, the subsequent environmental impact report (SEIR) for the golf course was recommended as complete by the Planning Commission on May 26, 1996 and certified by the City Council on July 9, 1996. On March 28, 2000, the City Council denied an appeal of the Assistant City Manager's decision to prepare an addendum to the SEIR. On April 18, 2000, the Assistant City Manager approved an addendum to the SEIR for the golf course to reflect changes made to the mitigation measures required by the State Regional Water Quality Control Board. The SEIR and its addendum cover this project. This review is not a project as defined in the CEQA Guidelines, Section 15368, no further action is required and none of the conditions of CEQA Guidelines Section 15162 requiring additional environmental documents exist.

Existing General Plan: Hill Face Open Space, Toe of the Hill and Open Space.

Existing Zoning: P-90-9, Planned District (Amendment I)

Existing Land Use: Undeveloped open space portion of Avalon Homes development

Public Hearing Notice: Public hearing notification is applicable. A total of 338 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Estates Terrace, Belmont Terrace, Alpine Drive, Woodside Terrace, Monte Sereno Terrace, Montecito Drive, Piedmont Terrace, Saint Francis Terrace, Rancho Higuero Road, Galindo Drive, San Clemente Terrace, Avalon Heights Terrace and Costa Mesa Terrace. The notices to owners and occupants were mailed on October 24, 2003. A Public Hearing Notice was delivered to The Argus on October 20, 2003 to be published by October 23, 2003.

Executive Summary: Double Wood Golf Course, LLC entered into a development agreement with the City on July 23, 2002 (PLN2002-00273). The Development Agreement requires Double Wood to submit a letter to the Community Development Director setting forth the developer's good faith effort with the terms and conditions of the agreement. As correctly stated in the applicant's letter, during the review period 2002-2003, no obligations were required to be performed by Double Wood. Staff recommends the Planning Commission find the applicant in compliance with the Development Agreement.

Background and Previous Actions: P-90-9, DA 90-1, GP-90-7 EIR-90-31 were approved in May 1990 for the Avalon residential project. The subject parcel was included in the Avalon Homes as private open space. On May 23, 1995, the City Council approved a planned district amendment (P-90-9H) to allow the consideration of a golf course on the subject property. On July 9, 1996, the City Council approved Double Wood's proposed amendment to the Planned District, P-90-9 (I), for the 18-hole golf course.

On October 11, 2001, the Planning Commission approved a preliminary grading plan and minor amendments to the Planned District to reflect changes resulting from requirements of the State Regional Water Quality Control Board. (PLN 2001 00360). On July 23, 2002, the City Council approved the Development Agreement. (PLN2002-00273)

Golf Course Construction Status: The applicant has provided the following statement on the status of Golf Course Construction: "Since the execution of the Development Agreement, despite the poor economy, Double Wood has continued to take steps to put it in a position to start grading the project at some point in the future. Most recently, Double Wood has engaged Balance Hydrologics to address concerns raised by the Regional Water Quality Control Board regarding the draft integrated pest management control plan and the water quality plan."

Development Agreement Description: The Development Agreement requires Double Wood to submit a letter to the Community Development Director setting forth the developer's good faith effort with the terms and conditions of the agreement. The major features of the agreement are summarized in the following section. The summary is followed with a section discussing the developer's compliance with the provisions of the agreement.

City Benefits:

Green Fee discount: City of Fremont seniors (60 years old and over) and juniors (18 years old or younger) are to receive green fee minimum discounts of 10 percent for play Monday through Thursday. If discounts are offered to other nonresidents, the discount for Fremont seniors and juniors will be 5 percent more than that offered to other seniors and/or juniors. For example, should a discount of ten percent be offered to all seniors, Fremont seniors will be given a 15 percent discount.

City Tournaments: Two City-sponsored tournaments per year will be provided. One-year in advance scheduling will be required.

Free Passes: Four free passes per month are to be provided to the City Manager for use by the City for business development purposes.

Advance Bookings: City residents will be allowed to book tee times one day in advance of non-residents if the City implements a program providing discounts and other benefits for residents of Fremont. The golf course operator will not be obligated to provide these one-day advance bookings if the City fails to initiate and operate such a program.

City Use of Clubhouse: The City would have the right to use the clubhouse facilities four times per year for City activities.

Cash Contribution: In the sixth year of course operation, Double Wood is required to pay the City \$22,500 during that year and each year after for nine more years, for a total of \$225,000.

Indemnity: Under the development agreement, the developer will indemnify, defend and hold harmless the City from any claims which arise because of any act or omission by the developer or its agents.

Developer's Benefits:

Vested Rights: The Planned District, the preliminary grading plan and other City approvals (the "Existing Approvals") will control the development of the golf course and any regulation or similar action enacted after the Development Agreement ("Subsequent Enactment") which prevents the construction of the golf course or would require Double Wood to obtain additional discretionary approvals that would be inconsistent with the terms of the agreement. Double Wood would be exempted from such regulations. With the vested rights provided by the Development Agreement, Double Wood is not subject to voter-enacted Measure T.

The agreement does not prevent the City from imposing new City-wide fees or modifying existing City-wide fees providing those fees do not conflict with the terms, spirit or intent of the agreement. Changes to or new uniform code regulations and new rules, regulations and official policies which do not conflict with existing ones and do not prevent or otherwise restrict the golf course construction are also allowed.

Building Moratorium: Should any building moratorium or similar measure be adopted during the life of the development agreement, the City would not apply it to the golf course to the fullest extent permitted under State law.

City Cooperation: The agreement required the City to cooperate with Double Wood in its efforts to get approvals from other public agencies. All the necessary permits or approvals from other public agencies have been obtained.

Development Agreement Term: Unless extended, the development agreement expires in 2012. The City benefits related to the golf course operations would continue on for the life of the course, unless modified or deleted by mutual agreement.

Compliance Analysis: All of the developer's obligations are triggered by the start of golf course operations. Since the golf course has not been constructed, none of the requirements summarized above were required during the 2002-2003 review period. Thus, staff recommends the developer be found to be in compliance with the Development Agreement.

Response from Agencies and Organizations: No comments have been received.

Enclosures:

Exhibit "A" (Development Agreement), Developer's Compliance letter, dated September 8, 2003.

Exhibits: None

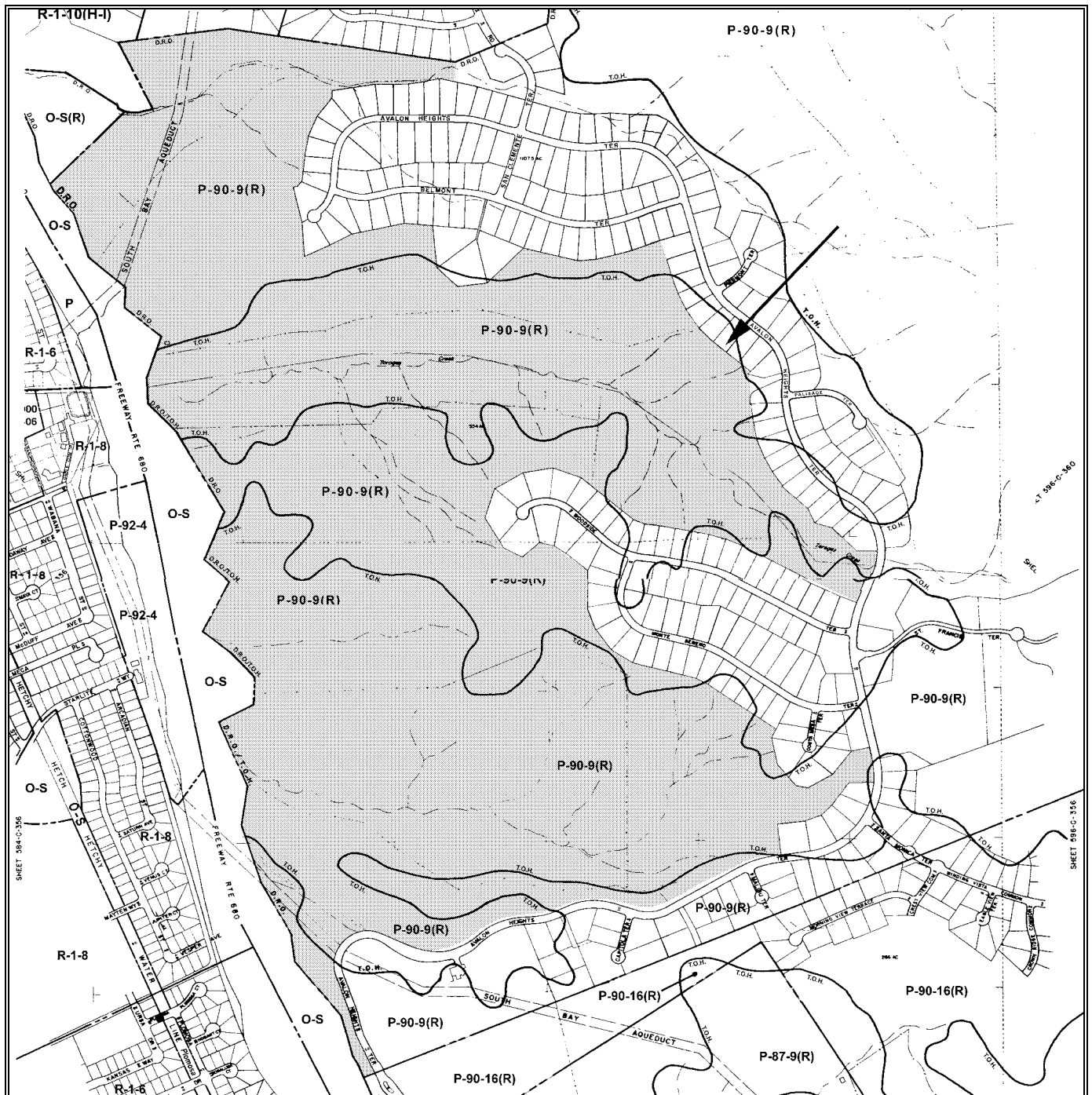
Informational Exhibits: General Plan and Zoning Exhibits

Recommended Actions:

1. Hold public hearing.
2. Find the annual review of the Development Agreement is not a project as defined in CEQA Guidelines Section 15168 and that no further environmental document is needed for this review.
3. Find and determine on the basis of substantial evidence in the record of the proceedings, that for the review period of 2002-2003, the Developer has complied with its Obligations under Development Agreement PLN2002-00273 between the City of Fremont and Double Wood Golf Course, LLC.

Existing Zoning

Shaded Area represents the Project Site



Existing General Plan
Shaded Area represents the Project Site

